would be loss of income of $3 per day or $90 per month. He was about 20 years of age at the time of the accident and if he had continued working there is every reason to believe that on his retirement he would, but for the accident, be earning more. Of course there would be the usual hazards of life to consider and taking this into account there would at least be 25 years expectation of working life. From the figures given in the annuity table the future loss of earnings would be $15,217.20. Adding the sum of $13,000 to this I award under the heading of general damages $28,217.20. As regards his claim for special damages, except for one item which relates to food and nourishment the rest had been fairly substantiated. There will be an award under this heading for the sum of $752.

Accordingly there will be judgment for the 1st plaintiff for the sum of $28,217.20 general damages and $752 special damages with costs to be taxed. As already indicated there will be judgment for the 2nd plaintiff in the sum of $500 but that costs be taxed on the High Court scale.

*Judgment for the plaintiffs.*

Solicitors: *D. A. Devadason; Elyas Majeed & Co.*

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## BAJAJ TEXTILES LTD. v. GIAN SINGH & CO. LTD.

**[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Ambrose J.) February 29, 1968]**

**[Singapore — Federal Court Civil Appeal No. Y. 37 of 1967]**

*Sale of goods — Goods sold and delivered — Balance of price of — Counterclaim — Amount due on running account — Limitation of action — Part payments on account — Transfer of liabilities.*

This appeal arose out of an action in which the plaintiffs claimed $1,336.35, being the balance of the price of goods sold and delivered to the defendants. The appeal was brought by the plaintiffs and concerned the defendants' counterclaim for $690,377.66 on a running account. The defence to the counterclaim was that the defendants owed to the plaintiffs $11,846 on the running account. On April 24, 1967, the plaintiffs amended their defence to the counterclaim by pleading limitation. The trial judge held that a claim on a running account was a cause of action known to the law, and ordered that the registrar take an account of all transactions on the running account between the defendants and the plaintiffs from May 14, 1951, to November 31, 1962, and kept in the books of Gian Singh & Co. and Gian Singh & Co. Ltd.

The plaintiffs appealed against the decision of the trial judge on four grounds: (1) the learned trial judge erred in permitting the defendants to put forward a counterclaim for the amount due on a running account which was not a cause of action known to the common law; (2) the learned trial judge erred in finding that the plaintiffs' defence of limitation failed by reason of part payments made by the plaintiffs to the defendants on account generally. Such part payments were not pleaded by the defendants in their reply to the defence to counterclaim; (3) the learned trial judge was wrong in holding that the debts of Bajaj Textiles were transferred to the plaintiffs and became the liability of the plaintiffs; (4) the trial judge erred in permitting the defendants to give evidence of transactions of which no or insufficient particulars had been filed pursuant to several orders for particulars with which the defendants have failed to comply.

**Held,** dismissing the appeal: (1) the amount due on a running account is a cause of action known to the common law;

(2) the learned trial judge was perfectly right in applying the case of *Re Footman Bower & Co. Ltd.*(1) and deciding against the plaintiffs on the issue of limitation;

(3) the balance sheets produced at the trial clearly supported the view that plaintiffs took over the liabilities of Bajaj Textiles and, therefore, there was no substance in the third ground of appeal;

(4) it was incorrect to state that the defendants had not complied with several orders for particulars. The fourth ground of apeal was accordingly devoid of substance.

*Case referred to:—*

(1) *Re Footman Bower & Co. Ltd.* [1961] 2 All E.R. 161.

CIVIL SUIT.

*K. A. O'Connor* for the appellants.

*L. A. J. Smith* (*V. K. S. Narayanan* with him) for the respondents.

*Cur. Adv. Vult.*

**Ambrose J.:** This appeal arises out of an action in which the plaintiffs, Bajaj Textiles Ltd., claim $1,336.35 cts., being the balance of the price of goods sold and delivered to the defendants, Gian Singh & Co. Ltd. The appeal is brought by the plaintiffs and concerns the defendants' counterclaim for $690,377.66 cts. on a running account. The defence to the counterclaim is that the defendants owe the plaintiffs $11,846 on the running account.

The trial judge held that a claim on a running account is a cause of action known to the law, and ordered that the registrar take an account of all transactions on the running account between Gian Singh & Co. and Bajaj Textiles and Gian Singh & Co. Ltd. and Bajaj Textiles Ltd. from the 14th May, 1951, to the 31st November, 1962, and kept in the books of Gian Singh & Co. and Gian Singh & Co. Ltd.

The plaintiffs appeal against the decision of the trial judge on four grounds.

Before I proceed to consider them, I will state the history and nature of the dealings between the parties as found by the trial judge. I quote his own words:—

"From the evidence before me the following facts emerged. Hardial Singh, Inder Singh, Hira Singh and Balwant Singh are brothers. Prior to 1951 they were all partners in the firm of Gian Singh & Co., the firm of Bajaj Textiles and some other firms in Singapore, Malaya and India. Gian Singh & Co. was the firm which indented

goods from all over the world and had all the necessary banking facilities. In 1951 the partnership was dissolved. Hira Singh and Balwant Singh took over and carried on the business of Gian Singh & Co. and Inder Singh took over and carried on the business of Bajaj Textiles as sole proprietor. Prior to the dissolution of the partnership large quantities of goods had been ordered from all parts of the world by Gian Singh & Co. and confirmed letters of credit through the banks had been established and firm contracts had been entered into. Under the deed of dissolution of the partnership these goods when they were received by Gian Singh & Co. were to be divided in these proportions — 27½% to Hardial Singh, 25% to Inder Singh, 23¾% to Hira Singh and 23¾% to Balwant Singh. The brothers were to pay to Gian Singh & Co. for the goods delivered to them. After the dissolution of the partnership, Gian Singh & Co. delivered the goods to the brothers as and when they arrived. In January, 1952, Gian Singh & Co. Ltd., the defendants, were established which took over all the assets and liabilities of the firm of Gian Singh & Co. and Balwant Singh became and is still the managing director. On the 17th September, 1951, Bajaj Textiles Ltd., the plaintiffs, were incorporated and Inder Singh became and still is the managing director. One of the objects of the plaintiff company was "to acquire the business and the goodwill of the business carried on at Singapore under the name or style of Bajaj Textiles, or any part or parts thereof and the assets and property or any part of the assets and property of such business and for this purpose to enter into and carry into effect with or without modification any necessary agreement or agreements."

The first ground of appeal is that the trial judge erred in permitting the defendants to put forward a counterclaim for the amount due on a running account which is not a cause of action known to the common law. In my opinion, the amount due on a running account is a cause of action known to the common law. The authority for this view is *Re Footman Bower & Co. Ltd.*,[1] where Buckley J. said at page 165:—

"In the case of a current account, where the debtor-creditor relationship of the parties is recorded in one entire account into which all liabilities and payments are carried in order of date as a course of dealing extending over a considerable period, the true nature of the debtor's liability is, in my judgment, a single and undivided debt for the amount of the balance due on the account for the time being without regard to the several items which as a matter of history contribute to that balance."

The trial judge found there was a running account in the present case between the plaintiffs and the defendants. He said:—

"From the evidence I find that the dealings between the parties consisted mainly of goods sold and delivered by the defendants to the plaintiffs and of loans from one to the other. The account between them was kept in the ledger of the defendants and the defendants debited the plaintiffs with the costs of the goods as and when they were supplied and with the amount of the loans as and when they were made. The plaintiffs from time to time made payments to the defendants on account generally and credit was given in the ledger for these payments as they were made. The payments were made in varying sums and clearly were not made in respect of any particular debit. The plaintiffs also kept an account in the name of the defendants in which there was a series of credits and debits. The account between the parties is in fact a running account which to the knowledge of both parties is of that kind and kept in that way. The claim of the defendants is to recover from the plaintiffs the balance due on the running account but the defendants say that they do not owe anything to the plaintiffs and that in fact the defendants owe them on the running account."

Before I proceed to the second ground of appeal, it is necessary to state that on the 24th April 1967, the plaintiffs amended their defence to the counterclaim by pleading limitation. At the commencement of the hearing of the counterclaim on the 24th May, 1967, the defendants filed a reply which reads as follows:—

"1. The defendants join issue with the plaintiffs on their reply and defence to counterclaim and in further answer thereto will say that if the claim is otherwise barred by limitation which is denied, the plaintiffs by their affidavit of the 20th August, 1963, have claimed that the defendants' debt if it arises, arises on a running account which of itself is an acknowledgement of the said debt and a promise to pay.

2. Further from the year 1952 up and until the year 1963 when the proceedings herein were commenced, on numerous occasions the plaintiffs herein met the defendants and acknowledged the debt and promised to pay same but repeatedly asked for time."

At the trial it was submitted by counsel for the plaintiffs that part of the claim of the defendants was barred by limitation and that the defendants could only recover in respect of dealings which took place during the six years prior to the 25th March, 1964, when the original counterclaim was filed. It was also submitted that there had been no acknowledgement of the claim by the plaintiffs to bring the case within section 26(2) of the Limitation Ordinance, 1959. Section 26(2) provides as follows:—

"Where any right of action has accrued to recover any debt or other liquidated pecuniary claim . . . . and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgement or the last payment."

The trial judge found that the evidence before him did not disclose that there was any acknowledgement within section 26(2) of the Limitation Ordinance, 1959. But he held that the claim of the defendants was not barred by limitation. The reason he gave was this:—

"It is clear from the case of *Re Footman Bower & Co. Ltd.*, that where there is a running account and a payment is made on account generally it is a payment on account of the whole balance outstanding at the date of the payment and therefore the payment is 'in respect of' that balance for the purpose of section 26(2) of the Limitation Ordinance, 1959, so that time started to run afresh on the occasion of each payment."

The second ground of appeal is as follows:—

"That the learned trial judge erred in finding that the plaintiffs' defence of limitation failed by reason of part payments made by the plaintiffs, to the defendants on account generally. Such part payments were not pleaded by the defendants who relied in their reply to further amended defence to counterclaim, solely upon certain specified alleged acknowledgements, and accordingly, no evidence was led as to the number or nature of the alleged part payments and no cross-examination or legal argument was directed thereto. In the circumstances the learned trial judge was wrong in applying the case of *Re Footman Bower & Co. Ltd.*

and so deciding against the plaintiffs on the issue of limitation. The learned trial judge should have found that transactions between the parties prior to the six years before the issue of the writ in the action (i.e. prior to 19th July, 1957) were barred by limitation, and should have directed the registrar to hear evidence of only such transactions as took place between the parties after the said 19th July, 1957."

It is true that the part payments made by the plaintiffs to the defendants on account generally are not expressly pleaded in the defendants' reply to the defence to counterclaim. But it seems to me in relying on a running account, which was admitted by Inder Singh, the managing director of the plaintiff company, in his affidavit of the 20th August, 1963, the defendants were clearly relying on the part payments to be found in the running account, particulars of which were supplied to the plaintiffs. In my opinion, the plaintiffs were fully aware that the defendants were relying on these part payments. In my judgment, the trial judge was perfectly right in applying the case of *Re Footman Bower & Co. Ltd.* and deciding against the plaintiffs on the issue of limitation. I would add that, in my view, the trial judge was right in treating the part payments as made on account generally and not on account of any particular items, because the only liability was in respect of a balance due on current account.

The third ground of appeal is that the trial judge was wrong in holding that the debts of Bajaj Textiles were transferred to the plaintiffs and became the liability of the plaintiffs. The trial judge found that the plaintiffs acquired the business of Bajaj Textiles as a going concern and they took over not only the assets but also the liabilities of Bajaj Textiles; and that it was the intention of Inder Singh that the plaintiffs would be responsible for the liability of Bajaj Textiles. Before the present appeal was heard, the defendants obtained leave to adduce and read, in addition to the evidence produced in the court below, the following evidence:—

(1) Audited balance sheet of Bajaj Textiles, Singapore, as at 31st December, 1951,

(2) Audited balance sheet of Bajaj Textiles, Limited, Singapore, as at 31st December, 1952, and

(3) Audited balance sheet of Bajaj Textiles, Limited, Singapore, as at 31st December, 1953.

In the audited balance sheet of Bajaj Textiles, Ltd. as at 31st December, 1952, the liability of the plaintiffs Bajaj Textiles, Ltd., to the defendants, Gian Singh & Co. Ltd., is shown as $589,901.63 cts. In the audited balance sheet of Bajaj Textiles, Ltd., as at 31st December, 1953, the liability of the plaintiffs, Bajaj Textiles, Ltd., to the defendants, Gian Singh & Co. Ltd., is shown as $589,231.67 cts. At the foot of each of the balance sheets the auditors state that they have examined the balance sheet with the books and vouchers of Bajaj Textiles, Ltd., and have obtained all the information and explanations they have required; and that in their opinion and to the best of their information and the explanations given them and as shown by the books of the company the balance sheet presents a true and fair view of the state of the company's affairs at the date mentioned. These balance sheets clearly support the view that the plaintiffs took over the liabilities of Bajaj Textiles. I find, accordingly, no substance in the third ground of appeal.

The fourth ground of appeal is that the trial judge erred in permitting the defendants to give evidence of transactions of which no or insufficient particulars had been filed pursuant to several orders for particulars with which the defendants had failed to comply. The position as regards particulars is stated by the trial judge as follows:—

> "In February, 1966, the plaintiffs applied by summons for an order that the defendants file further and better particulars of their amended counterclaim. By an order dated the 18th February, 1966, the defendants were ordered to deliver to the plaintiffs further and better particulars. '(a) stating how the sum of $690,377.66 . . . . is made up: (b) if for goods sold and delivered, stating the date and place of delivery, and the name of the individual alleged to have accepted delivery of the goods; (c) if in respect of other transactions, specifying the nature, date and place of each transaction and the name of the individual in the plaintiff company alleged to have participated therein.'
>
> The further and better particulars were not delivered and by an order dated the 24th June, 1966, the defendants were ordered to deliver them within three months from the service of the order.
>
> No further and better particulars were delivered and by an order dated the 24th October, 1966, the defendants were ordered to deliver them within 14 days of the service of the order.
>
> The further and better particulars were delivered on the 17th November, 1966, consisting of 31 pages.
>
> On the 1st March, 1967, the plaintiffs again applied by summons for an order that the defendants do file further and better particulars of their counterclaim in accordance with paragraphs (b) and (c), of the order of the 18th February, 1966.
>
> On 3rd March, 1967, the defendants delivered an additional further & better particulars.
>
> The summons of the plaintiffs first came before the judge on the 6th March, 1967, when by consent it was adjourned to the 31st March, 1967. On the 11th March, 1967, the plaintiffs' solicitors wrote to the defendants' solicitors in these terms:—
>
> > "We refer to the summons in this matter which has been adjourned for a fortnight, and to the observations of the learned judge when it was heard. The items of which our clients require further & better particulars are as follows: . . . . "
>
> The items are then set out. The letter concluded in these words:—
>
> > 'Please let us have these particulars in good time before the summons is due for hearing again.'
>
> The summons came on for hearing again on the 31st March, 1967, and by consent it was adjourned for

1 week. On the 31st March, 1967, the defendants filed further and better particulars pursuant to the plaintiffs' solicitors' letter of the 11th March, 1967, running to 15 pages. On the 7th April, 1967, the summons was again adjourned to the 21st April, 1967, and on that day by consent of the parties no order was made on the summons."

In view of what is stated by the trial judge, it seems to me to be incorrect to state that the defendants had not complied with several orders for particulars. The fourth ground of appeal is accordingly devoid of substance.

For the above reasons I would dismiss the appeal with costs.

**Wee Chong Jin C.J.** and **Tan Ah Tah F.J.** concurred.

*Appeal dismissed.*

Solicitors: *Drew & Napier; L. A. J. Smith.*

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## CHUA SEOK CHOO v. OOI CHUAN LOK

**[O.C.J. (Ong Hock Sim J.) February 29, 1968]**
**[Penang — Divorce Petition No. 4 of 1967]**

*Family Law — Divorce — Desertion — Constructive — Conduct amounting to.*

Where a spouse who has left the matrimonial home seeks divorce on the ground of constructive desertion, the conduct of the other spouse relied upon to prove the *factum* and *animus* need not amount to a matrimonial offence, but it must be of such grave and weighty character that the court can properly regard as equivalent to expulsion in fact. A solitary instance of assault when the petitioner was with child is not conduct of such grave and weighty character to make the respondent guilty of constructive desertion.

*Case referred to:—*

(1) *Buchler* v. *Buchler* [1947] P. 25.

DIVORCE PETITION.

*David Choong* for the petitioner.

**Ong Hock Sim J.** (delivering oral judgment): This petition is filed on the ground of desertion. The allegation is contained in one paragraph of the petition, that is, in paragraph 7 which reads:—

"That on the 16th day of November 1963 at No. 8 Trang Road Penang aforesaid the respondent beat the petitioner and the mother of the respondent scolded the petitioner. Life was made so unbearable for the petitioner who was then with child that the petitioner left No. 8 Trang Road Penang and returned to stay with the parents of the petitioner at No. 73 McCallum Street Penang."

In this case, it was the petitioner who left the matrimonial home and therefore to support the alleged desertion she must show that the husband had by his conduct compelled her to leave the matrimonial home. This is termed constructive desertion and for this it is necessary to prove both the *factum* and the *animus* on the part of the spouse charged. There must be expulsive conduct on the part of the respondent which impelled the petitioner to abandon the matrimonial home. As stated by Asquith L.J. in *Buchler* v. *Buchler*,(1) at page 45,

"Constructively, the deserter may be the party who remains behind, if that party has been guilty of conduct which justifies the other party in leaving. To afford such justification the conduct of the party staying on need not have amounted to a matrimonial offence, such as cruelty or adultery. But it must exceed in gravity such behaviour, vexatious and trying though it may be, as every spouse bargains to endure when accepting the other 'for better, for worse'. The ordinary wear and tear of conjugal life does not in itself suffice";

and at p. 47:—

"It may, no doubt be galling — or, in some sense of the word, humiliating — for a wife to find that the husband prefers the company of his men friends, his club, his newspaper, his games, his hobbies, or indeed his own society, to association with her, and a husband may have similar grievances regarding his wife. But this is what may be called the reasonable wear and tear of married life, and if it were a ground for divorce, a heavy toll would be levied on the institution of matrimony."

A mere wish or intention that the other spouse should leave is insufficient by itself to constitute desertion. The wish or intention must be accompanied by conduct which is of a grave and weighty character and which the court can properly regard as equivalent to expulsion in fact.

The sole instance of assault, when it is not disputed that the petitioner was 7 months' pregnant, in my view, is not of that grave and weighty character to justify the petitioner leaving.

Here it is alleged that there was assault but how grave is not disclosed in the petition. On the face of the petition, there is only this one solitary instance. It was not disclosed what form the beating took. The petitioner left the matrimonial home and it is clear she had no *animus revertendi*, that is, that she had no thought of returning and on her own admission she herself left her home without intending to return. It may be true and I have no reason to disbelieve the evidence that the respondent had paid nothing towards the maternity fees or towards the support or maintenance of his wife or child all these years but if the petitioner chooses to leave the matrimonial home, the obligation to maintain and support is not obligatory for the respondent. True he has made no attempt to call her back. Whether that was due to pride or that he wished to end the consortium, I am not able to say. I think the law does not place the obligation on him to call the petitioner home.

Beyond the one solitary instance of beating there was no evidence of other assaults and further no sufficient particulars are set out. I do not consider that this one beating, be it one of many other assaults, can amount to expulsive